

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CINDY O'CONNOR,

Plaintiff,

v.

20-CV-1781-LJV-JJM
DECISION & ORDER

WAL-MART STORES EAST, LP, *et al.*,

Defendants.

On November 21, 2019, the plaintiff, Cindy O'Connor, commenced this action in the New York State Supreme Court, Erie County, seeking to recover for personal injuries sustained in a slip and fall. Docket Item 1-2. On December 4, 2020, the defendants removed the action to this Court based on diversity of citizenship. Docket Item 1. On January 7, 2021, this Court referred the case to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28 U.S.C. § 636(b)(1)(A), Docket Item 10; a few days later, the Court amended the referral to include all proceedings under 28 U.S.C. § 636(b)(1)(B) as well, Docket Item 12.

On January 8, 2021, the plaintiff moved to remand the case to state court, Docket Item 11, and on January 20, 2021, the defendants responded, Docket Item 14. On January 26, 2021, Judge McCarthy issued a Report and Recommendation ("R&R") finding that the plaintiff's motion should be denied. Docket Item 15. The parties did not object to the R&R, and the time to do so has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). The court must review *de novo* those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge McCarthy's R&R as well as the parties' submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge McCarthy's recommendation to deny the plaintiff's motion to remand. This Court agrees with Judge McCarthy that not only was the plaintiff's motion untimely, but the plaintiff deliberately attempted to prevent removal by repeatedly stalling her response to the defendant's demand for the amount in controversy, "thereby excusing defendants' failure to remove" within a year of the action's commencement. Docket Item 15 at 3-4.

For the reasons stated above and in the R&R, the plaintiff's motion to remand, Docket Item 11, is DENIED. The case is referred back to Judge McCarthy for further

proceedings consistent with the referral orders of January 7 and 11, 2021, Docket Items 10 and 12.

SO ORDERED.

Dated: February 22, 2021
Buffalo, New York

A handwritten signature in black ink, appearing to read "L. J. Vilaro", written in a cursive style.

LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE